

# **Association Professionnelle des Transitaires de l'Ile Maurice**

## **STANDARD TRADING CONDITIONS 20-03-2010**

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## PART I DEFINITIONS AND APPLICATION

1. (a) In these Conditions:

- (i) "Authority" means a duly constituted legal or administrative person acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;
- (ii) "Company" means an Association Professionnelle des Transitaire et affilies (APT) member which provides any Services upon and subject to the provisions of these Conditions;
- (iii) "Container" means freight container (including without limitation any container flexi-tank, trailer, transportable tank, flat, pallet or any article used to consolidate goods) which may carry unique identification numbers and markings, as well as any equipment (including devices which permit its ready handling) forming part thereof or connected thereto;
- (iv) "Customer" means any person at whose request or on whose behalf the Company provides any Services;
- (v) "Dangerous Goods" includes:  
(A) dangerous goods as defined in the Maritime and Port Authority of Mauritius.  
  
(B) Goods specified by the Road Traffic authority  
  
(C) goods which are or may become of a dangerous, inflammable or radio-active character or damaging to itself or other property, or goods so dangerously packed, or goods likely to harbour or encourage vermin or other pests, or goods which owing to legal, administrative or other obstacles as to their carriage, discharge or otherwise may be detained or cause any other property or person to be detained;  
  
(D) empty receptacles which were previously used for the carriage of Dangerous Goods unless such receptacles have been rendered safe; And  
  
(E) Goods which are considered to be dangerous or hazardous by any Authority and/or any legislation or regulations.
- (vi) "Electronic Data Interchange" means the electronic transfer from computer to computer of commercial or administrative transactions using agreed standard to structure the transaction or message data;
- (vii) "Goods" means the cargo in relation to which the Services are provided by the Company and includes any Container, packaging or pallet supplied by or on behalf of the Customer;
- (viii) "Hague-Visby Rules" means the provisions of the International Convention for the unification of certain rules relating to bills of lading signed at Brussels on 25 August 1924, as amended by the Protocol made at Brussels on 23 February 1968 as further amended and/or supplemented by the UN Convention of Contracts for the International Carrying of Goods Wholly or Partly by Sea aka the Rotterdam Rules, as applicable for Mauritius
- (ix) "Owner" means the owner of the Goods and includes any other person who is or may become interested in the Goods;
- (x) "Services" means any business undertaken or any advice, information or services provided by the Company; and
- (xi) "Warsaw Convention" means the Convention for the unification of certain rules relating to international carriage by air opened for signature at Warsaw on 12 October 1929, as amended by the Hague Protocol of 1955 and the Montreal Protocol of 1995.
- (xii) "Conditions"  
1.(a) means the provisions set out herein including the "Rules Governing Electronic Data Interchange in particular but also where applicable but not exclusively the provisions of Part IV of the Data Protection Act 2004

- (b) Where applicable, words importing the singular include the plural and vice versa; words importing a gender includes every gender and references to persons include bodies corporate and non-corporate.
  - (c) Clause headings are inserted for convenience of reference only and shall be ignored in the interpretation of these Conditions.
  - (d) Any reference to any statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made hereunder or under such re-enactment.
2. (a) Any Services or activities provided by the Company, whether gratuitously or otherwise, shall be subject to these conditions which are deemed to be incorporated into any agreement or arrangement between the Company and its Customer, and which are also deemed to prevail over any conditions of contract of the Customer.
- (b) In respect of any agreement or arrangement between the Company and its Customer for the provision of any Services to which these Conditions apply that is effected by means of Electronic Data Interchange, the provisions set out where applicable in Part IV of the Data Protection Act 2004 and any provisions of legislation applicable to Mauritius shall, unless otherwise expressly agreed, apply and shall be deemed to form part of these Conditions.
  - (c) Without prejudice to Clause 2(a) above,
    - (i) the provisions of Part II hereunder shall apply to all Services provided by the Company whether as agent or principal;
    - (ii) the provisions of Part III shall apply only to the extent that the Services are provided by the Company as agent. In the event of any inconsistencies between any provisions in Part III and those in Part II, the provisions in Part II shall apply to the extent that they are not inconsistent with those in Part III; and
    - (iii) the provisions of Part IV shall apply only to the extent that the Services are provided by the Company as principal. In the event of any inconsistencies between any provisions in Part IV and those in Part II, the provisions in Part II shall apply to the extent that they are not inconsistent with those in Part IV.
  - (d) If any legislation is compulsorily applicable to any Services, these conditions shall as regards such Services be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation. If any part of these Conditions is repugnant to such legislation to any extent such part shall as regards such Services be void to that extent but no further.
  - (e) Subject to (d) above, where a "bill of lading" or "waybill" is issued by or on behalf of the Company and provides that the Company contracts as carrier, the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with these Conditions.
  - (f) Every variation, cancellation or waiver of these Conditions or any part thereof must be in writing signed by a Director of the Company. Notice is hereby given that no other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.
3. All Services are provided by the Company as agents except in one or more of the following circumstances where the Company acts as principal:
- (a) where the Company performs any carriage, handling or storage of Goods but only to the extent that the carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company or its servants;
  - (b) where the Company contracts with its Customers as a Multimodal Transport Operator; or
  - (c) to the extent that the Company expressly agrees in writing to act as a principal.
4. Without prejudice to the generality of Clause 3,
- (a) the charging by the Company of an inclusive price for any Services shall not in itself determine that the Company is acting as an agent or a principal in respect of such Services;
  - (b) the supplying by the Company of their own or leased equipment and/or facilities, shall not in itself determine that the Company is acting as an agent or a principal in respect of such Services;
  - (c) the Company acts as an agent where the Company procures the issue of a bill of lading or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner; and
  - (d) the Company acts as an agent and never as a principal when providing Services in respect of or relating to customs requirements, taxes, licences, consular documents, certificates of origin, inspection, certificates and other services similar or incidental thereto.

## **PART II            GENERAL CONDITIONS**

### **Obligations of the Customer**

5. The Customer warrants that he is either the Owner or the authorised agent of the Owner of the Goods, and that he is authorized to accept and is accepting these Conditions not only for himself but also as agent for and on behalf of the Owner of the Goods.
6. The Customer warrants that he has reasonable knowledge of matters affecting the conduct of his business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto.
7. The Customer shall give to the Company sufficient and executable instructions.
8. The Customer warrants that the description and particulars of the Goods are complete, accurate and correct
9. Unless the Company has agreed in writing to pack the Goods, the Customer warrants that the Goods are properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and in particular to withstand the ordinary risks of handling, storage and carriage..
10. The Customer warrants that where the Company receives the Goods from the Customer already stowed in or on a Container or any other device constructed for the carriage of goods (each hereafter individually referred to as "the transport unit"), the transport unit is in good condition, and is suitable for the carriage of the Goods to the intended destination.
11. The Customer warrants that it has complied with all laws and regulations relating to the nature, condition, packing, handling, storage and carriage of the Goods. The Customer warrants that all the Laws and regulations governing the entrance of the Goods in the Republic of Mauritius have been fulfilled and in particular that the details of the Goods are properly labeled in either English or French without any need to process to particular additions to the details thereof upon the said Goods by the Customer or his agent after the arrival of the Goods in Mauritius and that the said details are inscribed on the Goods according to the Laws and regulations in force in the Republic of Mauritius

### **Special Instructions, Goods and Services**

12. (a) Unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.
  - (b) If the Customer delivers to the Company or causes the Company to deal with or handle Dangerous Goods in breach of Clause 12(a) above, the Company shall not be liable for any loss or damage whatsoever caused by or to the Dangerous Goods and the Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, liabilities (whether civil, criminal fiscal or otherwise), damages, costs and expenses whatsoever arising in connection with or incidental to such loss or damage, and the Dangerous Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time without compensation to and at the cost of the Customer.
  - (c) If the Company agrees in writing to accept Dangerous Goods and subsequently, in the sole opinion of the Company, (i) they are deemed to constitute a risk to other goods, property, life or health or (ii) owing to legal, administrative or other obstacles whether as to their carriage, discharge or otherwise they may be detained or cause any other property or person to be detained, they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner without compensation or any liability whatsoever attaching to the Company.
13. No insurance will be effected except upon express instructions given in writing by the Customer and all such insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy held by the Company. Should the insurers dispute their liability for any reason whatsoever the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its Customers. The Company acts solely as agent for the Customer in effecting insurance and does so subject to the limits of liability contained in clauses 29 and 30 herein notwithstanding that loss or damage was caused by the Company's negligence or default including any failure to place any insurance or the appropriate insurance. The Customer further warrants that all the necessary details have been disclosed to the Company prior to the subscription of any insurance policy and agrees to defend, indemnify and hold harmless the Company against all penalties, claims, liabilities (whether civil, criminal, fiscal or otherwise), damages, costs and expenses whatsoever arising in connection with or incidental to any claim from the insurers or any related third party as a result of any failure to provide the Company with the said details.
  14. Except in accordance with express instructions previously received in writing and accepted in writing by the Company, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery.
  15. (a) Unless otherwise previously agreed in writing by the Company, instructions relating to the delivery or release of goods in specified circumstances only (including without limitation against payment or against surrender of a particular document) are accepted by the Company as agents for the Customer where third parties are engaged to effect compliance with these instructions.

- (b) Notwithstanding the neglect or default of the Company, the Company shall not be under any liability in respect of such arrangements referred to in sub-clause (a) above.
- (c) In any event and notwithstanding the Company's negligence, the Company's liability in respect of the performance and arranging the performance of such instruction referred to sub-clause (a) above shall not exceed that provided under clause 29 herein.

16. The Company does not undertake that the goods shall depart or arrive by any particular date.

17. Customs Brokerage and clearing of goods may be effected on written clients request. The fee for a declaration does not include eventual Customs Offences Reports or any other administrative procedure due to non compliance of import procedure in which eventual additional fees or fine will be claimed. All declaration made by the company on behalf of client is subject to the documents submitted by the client which should be in English/ French version. The company has no liabilities on declaration made with documents of wrong or misleading description of the Goods. The Customer agrees to defend, indemnify and hold harmless the Company against all penalties, claims, liabilities (whether civil, criminal fiscal or otherwise), damages, costs and expenses whatsoever arising in connection with or incidental to any action by the relevant authorities as a result of wrong or misleading description of the Goods. On the other hand, any action of the Customer against the Company shall be governed by the limitation of liability conditions under Clauses 29 and 30 hereunder.

#### **General Indemnities**

18. The Customer undertakes that no claim shall be made against any director, servant, employee or contractor of the Company which imposes or seek to impose upon them any liability in connection with any Services undertaken by the Company and if any such claim is made, to indemnify the Company and the said director, servant, employee or contractor against all consequences thereof.

19. The Customer and the Owner shall hold harmless, defend and keep the company indemnified from and against:

- (a) All liability, loss, damage, costs and expenses whatsoever including without prejudice to the generality of the foregoing, all duties, taxes, imports, levies, deposits and outlays of whatsoever nature levied by any Authority in relation to the Goods and for all payments and fines arising out of the Company acting in accordance with the Customer's instructions or arising from any breach by the Customer or Owner of any Warranty or obligation contained in these Conditions or from the negligence of the Customer or Owner; and
- (b) Without derogation from sub-clause (a) above, any liability assumed or incurred by the Company when by reason of carrying out the Customer's instructions the Company has reasonably become liable or may become liable to any other party; and
- (c) All claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions regardless whether such claims, costs and demands arise from or in connection with the negligence or breach of duty of the Company its servants, sub-contractors or agents.
- (d) Advice and information, in whatever form as may be given, are provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information. Except under special arrangements, advice and information which are not related to instructions accepted by the Company are provided gratuitously and without liability.
- (e)
  - (i) The Customer and Owner expressly agrees that no servant, agent or other person (including any independent contractor) shall in any circumstances be under any liability to the Customer or Owner for any loss or damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment or as agent of the Company or otherwise. Without prejudice to the generality of the foregoing every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defense and immunity applicable to the Company shall also be available and shall extend to protect every such servant, agent or other person (including any independent contractor) and for the purpose of this condition, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such servants, agents or other persons (including any independent contractors) and all such persons shall to this extent be or deemed to be parties to the contract between the Company and the Customer or Owner.
  - (ii) In this Clause, "contractor" and "contractors" include direct and indirect sub-contractors and their respective servants and agents.
- (f) The Customer and Owner shall solely be liable for demurrage or loss, damage, contamination, soiling or detention Before, during or after the carriage of property (including but not limited to Containers) of the Company or any person or vessel referred to herein caused directly or indirectly by the Customer or Owner or any person acting as servants, agents or independent contractors for or on behalf of either of them.

#### **Charges, etc.**

- 20. (a) The Customer shall pay to the Company in cash or in such manner as the Company may agree and subject to the limitations of the mode of payment under the legislation in force in the Republic of Mauritius and in particular the provisions of the Financial Intelligence and Anti-Money Laundering Act 2002 and any regulations made hereunder all sums immediately when due without deduction or deferment on account of any claim, counterclaims or set-off and the Customer agrees to waive the right of set-off, if any, as against the company.
- (b) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall remain responsible and shall make payment of the same to the Company on receipt of

evidence of demand and in the absence of evidence of payment for whatever reason by such other person.

- (c) On all amounts overdue to the Company, the Customer shall pay to the Company interest, calculated from the date such amounts are overdue until payment thereof, at the rate of one and a half (1.5) per cent. per month together with an Attorney's commission of 10% should the services of the latter be resorted to.
- (d) Notwithstanding and without prejudice to Clause 20(c), in the event that the Customer fails to pay any sum due to the Company within five (5) days from the date any such sum is due, the Company shall be entitled at any time thereafter by written notice to the Customer declare that:
  - (i) all credit terms in respect of all or any part of the Services rendered pursuant to these Conditions shall be cancelled, whereupon the same shall be cancelled; and
  - (ii) all sums payable by the Customer to the Company in respect of all or any part of the Services rendered pursuant to these Conditions have become due and payable, whereupon the same shall immediately or in accordance with the terms of such notice become due and payable.
- (e) Any dispute as to the amount or accuracy of any invoice issued by the Company shall be raised by the Customer within 30 days from the date of the invoice, failing which, the Customer is deemed to have conclusively accepted that the invoice is complete and accurate.
- (f) Unless otherwise expressly agreed in writing, all invoices rendered by the Company are payable immediately on sight
- (g) Quotations are given on the basis of immediate acceptance and are subject to withdrawal or revision. Unless otherwise agreed in writing the Company shall be, after acceptance, at liberty to revise quotations or charges with or without notice in the event of changes outside the Company's control including but not limited to charges in currency exchange rates, rates of freight, insurance premiums or any changes applicable to the "Goods".

### **Liberties and Rights of the Company**

- 21. Except insofar as has otherwise been agreed in writing, the Company shall be entitled and the Customer hereby authorises the Company to enter into contracts on behalf of itself or the Customer and without notice to the Customer,
  - (a) for the carriage of Goods by any route, means or person;
  - (b) for the carriage of Goods of any description whether containerised or not on or under the deck of any vessel;
  - (c) for the storage, packing, transhipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
  - (d) for the carriage or storage of Goods in Containers or with other Goods of whatever nature; or
  - (e) for the performance of any of its own obligations, and to do such acts as in the sole opinion of the Company may be necessary or incidental to the performance of the Company's obligations.
- 22. (a) The Company shall be entitled but under no obligation to depart from the Customer's instructions in any respect if in the sole opinion of the Company there is good reason to do so in the Customer's interest and the Company shall not thereby incur any additional liability whatsoever, other than its liability (if any) hereunder.
- (b) The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- 23. If at any time the performance of the Company's obligations, in the sole opinion of the Company or any person whose services the Company makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavours by the Company or such other person, the Company may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer's or Owner's disposal at any place which the Company may deem in its sole opinion safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall wholly cease. The Customer shall pay on demand any additional costs of carriage and delivery to and storage at such places and all other expenses incurred by the Company.
- 24. If delivery of the Goods or any part thereof is not taken by the Customer or Owner at the time and place when and where the Company or any person whose services the Company makes use of calls upon the Customer or Owner to take delivery thereof, the Company shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, whereupon the liability of the Company in respect of such Goods shall wholly cease and the cost of such storage and all other expenses and liability whatsoever paid or payable or incurred or which may be incurred by the Company shall be paid by the Customer on demand.
- 25. Without prejudice to Clauses 22 to 24, the Company shall be entitled but under no obligation, at the expense of the Customer payable on demand and without any liability on the part of the Company to the Customer or the Owner, to sell or dispose:
  - (a) on giving 15 days' notice in writing to the Customer of Goods or any part thereof which in the sole opinion of the Company cannot be delivered as instructed; or
  - (b) without notice to the Customer, of Goods which have perished, deteriorated or altered, or are in immediate prospect of

doing so or which has caused or may reasonably be expected to cause loss or damage to any person or property or to contravene any applicable laws or regulations. Any costs, fees or fines which may be imposed by the relevant authorities will be claimed to the Customer by the Company in the event that no fault, negligence or tort may be ascribed to the detriment of the Company or any person whose services the Company will have made use of.

- (c) Goods unclaimed /uncleared from customs within 2 months as from their date of arrival will be sold by public auction or public tender by the Authorities
26. (a) All Goods and documents in the possession, custody and control of the Company or its agents shall be subject to a general lien and right of detention for all sums (including without limitation all costs and charges payable by the Customer) due to the Company at any time and from time to time whether in respect of Services provided or in respect of such Goods or other goods or otherwise. If the sums due as aforesaid are not satisfied within 15 days of a notice in writing by the Company to the Customer, the Company shall be entitled to sell or dispose of the Goods or documents whether by public auction, private treaty or otherwise, and the proceeds of sale shall be applied in satisfaction of firstly, the costs and expenses of the sale or disposal and secondly, the sums due to the Company without any liability whatsoever on the part of the Company to the Customer. In the event that the proceeds of sale are insufficient to satisfy all sums due to the Company, the Company shall be entitled to recover from the Customer all sums which remain outstanding.
- (b) Notwithstanding Clause 26(a) above, when the Goods are liable to perish or deteriorate, the Company's right to sell or dispose of the Goods shall arise immediately upon any sum becoming due to the Company subject only to the Company taking reasonable steps to bring to the Customer's attention its intention of selling or disposing of the Goods before doing so.
27. The Company shall have the right to enforce against the Customer and Owner jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.

### Containers

28. (a) If a Container has not been packed nor stuffed by the Company, the Company shall not be liable for loss of or damage to the contents thereof if caused by:
- (i) the manner in which the Container has been packed or stuffed
  - (ii) the unsuitability of the contents for carriage in Containers;
  - (iii) the unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Company, this paragraph shall apply only if the unsuitability or defective condition (a) arose without any negligence on the part of the Company or (b) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them or (c) arose as a result of the peculiarity of the Goods and such peculiarity is not made known to the Company; or
  - (iv) the Container not being sealed at the commencement of any carriage.
- (b) The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters provided for in (a) above.
- (c) Where the Company is instructed to provide a Container, in the absence of any specific request in writing, the Company is not under an obligation to provide a Container of any particular type or quality and the Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters provided for in (a) above as well as any action emanating from any relevant authority.

### General Liability

29. (a) The Company shall not be liable for any loss or damage whatsoever arising from:
- (i) the act or omission of the Customer or Owner or any person acting on their behalf;
  - (ii) compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them;
  - (iii) insufficiency of the preparation, packing, storage, labeling or marking of the Goods except where such service has been provided by the Company;
  - (iv) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf;
  - (v) inherent vice of the Goods;
  - (vi) riots, civil commotion, strikes, lockouts, stoppage or restraint of labour from whatsoever cause; or
  - (vii) any cause or event which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- (b) The Company shall not in any circumstances whatsoever and howsoever arising, including without limitation any negligence on the part of the Company, its servants and/or agents be liable for loss or damage howsoever caused to

property other than the Goods themselves, indirect or consequential loss or damage, loss of profits, loss of market or the consequences of any delay or deviation.

### **Amount of Compensation**

30. Except in so far as otherwise provided by these Conditions, the liability of the Company howsoever arising and notwithstanding that such liability shall have arisen from the neglect or default of the Company, of any extent or gravity, shall not exceed:

- (a) in respect of all claims other than those subject to the provisions of Clause 30(b) below, the lesser of
  - (i) the value of the Goods lost, damaged, misdirected, mis-delivered or in respect of which a claim arises; or
  - (ii) MUR 80 per gross kilogram of the said Goods, and shall not exceed MUR 300 000 in any event whatsoever in respect of any one claim; and
- (b) in respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges for the services in respect of the Goods delayed.

31. For the purposes of Clause 29 and Clause 31, the value of the Goods:

- (a) shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid; and
- (b) if there is no invoice value for the Goods, shall be calculated by reference to the value of such Goods at the place and time when they are delivered to the Customer or Owner, their assignees or such persons as instructed by the Customer or should have been so delivered. The value of the Goods shall be fixed according to the current market value or commodity exchange price or if there is no current market value or commodity exchange price, by reference to the normal value of Goods of the same kind and quality.

32. By special agreement in writing and on payment of additional charges, higher compensation may be claimed from the Company not exceeding the value of the Goods or the agreed value, whichever is the lesser.

33. (a) The Company shall be discharged of any liability whatsoever unless:

- (i) notice of any claim, such notice being a condition precedent to any liability on the part of the Company, is received in writing by the Company or its agent within 7 days after the date specified in (b) below; and
- (ii) The Company shall be discharged of any liability whatsoever unless suit is brought in the proper Courts within the limits of the Republic of Mauritius or arbitration tribunal so designated under any specific agreement after the date specified in (b) below.

(b) The date referred to in Clause 33(a) above shall:

- (i) in the case of damage to Goods, the date of delivery of the Goods, and in the case of loss of the Goods, the date the Goods should have been delivered;
- (ii) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered; and
- (iii) in any other case, the event giving rise to the claim.

### **General Average**

34. The Customer shall defend, indemnify and hold harmless the Company in respect of any general average or any claims of a general average nature which may be made on the Company and the Customer shall provide such security as may be required by the Company in this connection both for costs and adequate compensation and damages. Same shall be provided on demand by the Customer with a bank agreeable to the Company in the form of a bond or guarantee and shall satisfy the Laws and regulations in force in the Republic of Mauritius.

### **Miscellaneous**

35. Any notice served by registered post in relation to or in connection with the Agreement or the Services hereunder shall be conclusively deemed to have been received on the second day following the day on which it was posted to the address of the recipient last known to the Company. Any notice sent by facsimile transmission by the Customer or the Owner to the Company shall be conclusively deemed to have been received at the time of actual receipt by the Company. This clause shall be without prejudice to any other agreement or arrangement between the Company and the Customer or Owner relating to communications by means of Electronic Data Interchange.

36. The waiver by the Company of a breach or default of any of the provisions set out in these Conditions shall not be construed as a waiver of any succeeding breach of the same or other provisions herein nor shall any delay or omission on the part of the Company to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the Customer.

37. The rights and remedies conferred on the Company under these Conditions shall be cumulative and shall be in addition to and without prejudice to any rights or remedies otherwise available (whether at law or in equity) to the Company.



38. (a) The defences and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract or tort or in whatsoever form.
- (b) Notwithstanding any provisions to the contrary contained herein, Services in relation to goods of a fragile nature such as glass or china; antiques, works of art and pictures; bullion, precious metal objects and jewellery, precious stones; bank notes, coins, travelers cheques, drafts, credit and charge cards, any cards and documents entitling the holder to receive cash, goods or services, accounts, bills, deeds, evidence of debt; computer data on any medium, bonds, negotiable instruments or securities of any kind; goods of a perishable nature such as plants, foodstuffs or provisions; human remains; special goods such as live animals, birds, reptiles, fish and the like and radioactive cargoes are only rendered by the company solely at the Customer's risk without any liability whatsoever to the Company, including without limitation any liability arising from the negligence of the Company.
- (c) The rates published herewith are for the conveyance to all parts of the world of goods consisting of ordinary merchandise; the Customer is responsible for the payment of any increase in rates, freights, premiums or other charges which may be imposed after the commencement of the transit. Works of art and other goods of high value, may be accepted at rates which are available from the Company on request. Customs duties, local taxes and charges, portage and local delivery expenses are additional to the rates for carriage unless otherwise stated. All rates and charges when payable abroad are liable to be slightly increased to cover the Rate of Exchange.
- (d) The Company shall have the option of charging by value, weight or measurement.
- (e) In the event of a conflict between any provisions of these Rules and any law, regulation or decree, the provision of these Rules so affected shall be null and void or shall, where practicable, be curtailed and limited to the extent necessary to bring it within the requirements of such law, regulation or decree. Such a provision shall be severable from and shall not render null and void other provisions of these Rules.
- (f) Save in the case of communications by means of Electronic Data Interchange, the provisions of the Standard Trading Conditions relating to notices shall apply to any notices given by one party to another under or pursuant to these Rules.

#### **Jurisdiction and Law**

39. These Conditions and any claim or dispute arising out of or in connection with the Services of the Company shall be subject to the Laws and Regulations of the Republic of Mauritius and to the exclusive jurisdiction of the Mauritian courts or any arbitration tribunal designated by any specific agreement. In case of silence of the latter agreement as to the designation of the arbitrators or to the rules applicable to the said arbitration proceedings, or any part of thereof, the parties agree that the Rules applicable under the Code of Civil Procedure as well as those of the Mauritius Chamber of Commerce shall be applicable.

#### **PART III COMPANY ACTING AS AGENTS**

40. (a) To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.
- (b) The Company shall not be liable for the acts or omissions of such third parties referred to in sub-clause (a) above.
- (c) The Company shall not be responsible for any accident or for any act neglect or default howsoever arising whether willful or otherwise on the part of its agents or those with whom it contracts in respect of the Goods to be forwarded, whether they are carriers by land, sea or air (whether ship-owners, lightermen, canal, railway or aircraft operators or others) or warehouse keepers or other persons. The Company shall not be responsible for any money paid or remitted by it on behalf of the senders to any persons in respect of the Goods to be forwarded, whether for the purpose of paying duties or charges in respect of the Goods or otherwise. All the general and special exemptions stated in this condition shall apply although the particular rates or charges made by the Company to the senders or persons forwarding the Goods may not be identical with the amounts paid by it to such agents, contractors or other persons
41. (a) Without prejudice to Clause 21, the Company when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions.
- (b) The Company only forwards Goods subject to the contracts, terms, conditions, and regulations of the various persons, companies or Authorities into whose possession the Goods may pass.
- (c) The Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the satisfaction of the Customer's requirements.
- (d) The Company's liability towards the Customer shall be governed by Clauses 29 and 30 as above.
- (e) Parts I and II of these Rules, wherever applicable, shall apply to this Part as well.

#### **Choice of Rates**

42. Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing or handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.

## **PART IV COMPANY ACTING AS PRINCIPAL**

43. To the extent that the Company contracts as principal for the performance of the Customer's instructions, the Company undertakes to perform or in its own name to procure the performance of the Customer's instructions and subject to the provisions of these Conditions shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.
44. Notwithstanding any other provision in these Conditions, except for the provisions in clauses 29, 30, 31 and 32 herein, if it is proven that loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:
- (a) cannot be departed from by private contract, to the detriment of the claimant; and
  - (b) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.
45. Notwithstanding any provision in these Conditions but subject to Clauses 43 and 45, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of Clause 43 do not apply, the Company's liability shall be limited to those set out in the Hague-Visby Rules (and the Company shall be entitled to rely on all defences, exemptions or limitations provided to carriers by the Hague-Visby Rules. Reference in the Hague-Visby Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague-Visby Rules shall be construed accordingly.
46. Notwithstanding the provisions of Clause 44, if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the vessel establishes a limitation fund, the liability of the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.

### **Air Carriage**

47. If the Company acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given:  
If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carriers timetable as scheduled stopping places for the route. The address of the first carrier is the airport of departure.

### **Both To Blame Collision Clause**

48. The current Both-to-Blame Collision Clause as adopted by BIMCO (Baltic and International Maritime Council) is incorporated in and deemed to form part of these Conditions. If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act of negligence or default of the Master, Mariner, Pilot or the servant of the carrier in the navigation or in the management of the vessel, the merchant will indemnify the carrier against all loss or liability to the other or non-carrying vessel or her Owner insofar as such loss or liability represents loss of or damage to or any claim whatsoever of the owner of the said goods paid or payable by the carrying vessel or her Owner as part of his claim against the carrying vessel or carrier. The foregoing provisions shall also apply where the Owner operator or those in charge of any vessels or objects other than or in addition to the colliding vessels or objects are at fault in respect of a collision or contract.

### **Miscellaneous**

49. The Company's liability towards the Customer shall be governed by Clauses 29 and 30 as above.
50. Parts I and II of these Rules, wherever applicable, shall apply to this Part as well.

## ANNEXURE

### RULES GOVERNING ELECTRONIC DATA INTERCHANGE

#### 1. Objective and Definitions

- 1.1 These Rules are intended to facilitate the provision of Services by the Company to its Customers through the use of electronic DataInterchange by electronically sending and receiving data in agreed formats in substitution for conventional paper-based documents. These Rules seek to assure that such transactions are not legally invalid or unenforceable by reason only of their being effected by means of available electronic technologies for the benefit of the parties.
- 1.2 Terms defined in the Standard Trading Conditions to which these Rules form an Annex but not specifically defined herein shall, unless the context otherwise requires, have the same meanings when used in these Rules.
- 1.3 In these Rules, the following expressions, except where the context otherwise requires or where it is otherwise stated, shall have the following meanings:
- "Adopted Protocol" means the method for the interchange of Messages based on the [EDIFACT] standard for the presentation and structuring or the communication of Messages, or such other standard as may be specifically agreed upon in writing by the parties, and moreparticularly defined in the User Manual;
- "Data Log" means a complete and chronologically sequential record, automatically generated, of all the Messages sent and received by a party and maintained in accordance with the rules stipulated in the User Manual;
- "Message" means a communication relating to the provisions of the Services which is structured in accordance with the Adopted Protocol and includes, where the context permits, any part of such communication;
- "User Manual" means the edition currently in force of the manual on, inter alia, the operational, security and technical procedures and rules applicable to the transmission of Messages using the Adopted Protocol; and
- "writing" includes a duly authenticated Message.
- 1.4 In these Rules, references to "electronic" include a reference to mechanical, electromechanical, optical, electro-chemical or other medium for the storage or conveyance of transmitted Messages.

#### 2. Application

- 2.1 These Rules shall apply to all Messages between the Company and its Customers using the Adopted Protocol in relation to the provision by the Company of any Services to which the Standard Trading Conditions apply.
- 2.2 Except as expressly provided, these Rules do not apply to govern any other relationships (contractual or otherwise) in the context of which Messages are communicated and, in particular, do not apply to the underlying commercial transactions relating to the provision of the Services, which shall be governed by the Standard Trading Conditions.

#### 3. Systems Operations and Confidentiality

- 3.1 The Company and the Customer agree that each of them shall:
- (a) at its own expense, test and maintain its equipment, software and services necessary to effectively and reliably transmit and receive Messages;
  - (b) ensure that no changes are made to the systems operations which impair the mutual capabilities of the parties to communicate as contemplated by these Rules without providing reasonable prior notice of the intended change;
  - (c) Implement and maintain security procedures, including any specified in the User Manual, to protect Messages and their records against misuse, improper or unauthorised access, alteration or loss;
  - (d) that its Messages are correct and complete in form and secured in accordance with the provisions of the User Manual; and
  - (e) ensure that intermediaries employed to retransmit Messages are instructed not to make unauthorised change in the data content and that the data content of such Messages is not disclosed to any unauthorised person.
- 3.2 No information contained in any Message communicated under these Rules shall be considered confidential unless by operation of law or by designation in the User Manual or in the Message.

- 3.3 In the circumstances stipulated in the User Manual or if so agreed between the parties, the parties shall apply special protection (such as encryption or other means listed in the User Manual or agreed between the parties) to the Messages behind transmitted. Unless the parties otherwise agree, the recipient of Messages so protected shall ensure that at least the same level of protection used by the sender is applied for any further transmission.

#### 4. Verification of Messages

- 4.1 All Messages must identify the sender and recipient in accordance with the provisions of the User Manual and must include a means of verifying the formal completeness and authenticity of the Message by some means agreed upon in writing by the parties or by the means provided for in the Adopted Protocol.

#### 5. Integrity of Messages

- 5.1 Any Message transmitted in compliance with these Rules shall be deemed to have been received when accessible to the intended recipient in the manner designated in the User Manual. Subject to Rule 5.2, each party accepts the integrity of all Messages and agrees to accord these the same status as would be applicable to information sent via paper documents.
- 5.2 Where there is evidence that a Message has been or is likely to have been corrupted, garbled, incomplete, incorrect or not in good order, it shall not be acted upon by the recipient.
- 5.3 If the sender has been able to identify the circumstances mentioned in Rule 5.2, he shall re-transmit the Message as soon as practicable with a clear indication that it is a corrected Message. In the absence of such re-transmission, the recipient's version of the Message shall prevail.
- 5.4 If it is the recipient who is able to identify the circumstances mentioned in Rule 5.2, he shall inform the sender (if identifiable from the received Message) as soon as practicable and shall not act on the Message until he has received the correct Message or confirmation that the received Message is correct. In the absence of such notice to the sender by the recipient, the sender's version of the Message shall prevail.
- 5.5 Notwithstanding that the sender is responsible and liable for the completeness and accuracy of a Message, the sender will not be liable for the consequences of an incomplete or incorrect Message if the error is or should be reasonably obvious to the recipient.
- 5.6 If the recipient has reason to believe that the message is not intended for him, he should take reasonable action to inform the sender immediately and should delete the information contained in the Message from his system but not the Data Log.

#### 6. Acknowledgement of Receipt of Messages

- 6.1 Unless otherwise designated in the User Manual or the sender of a Message has expressly requested the recipient to acknowledge receipt of the Message, the receipt of the Message need not be acknowledged by the recipient.
- 6.2 Where an acknowledgement of receipt of a Message is designated in the User Manual or the sender of a Message has expressly requested the recipient to acknowledge receipt of a Message, the following provisions shall apply:
- (a) any acknowledgement of receipt of such a Message shall be given in such form, by such method and within such time limit as may be specified in the User Manual or as may be expressly agreed between the parties;
  - (b) where the User Manual does not specify the form, method and/or time limit for the acknowledgement of receipt of a Message, or the sender has not agreed with the recipient that the acknowledgement is to be given in a particular form, by a particular method and/or by a certain time limit, the acknowledgement may be given as soon as practicable after receipt of the Message by the recipient by:
    - (i) any communication by the recipient, automated or otherwise; or
    - (ii) any conduct of the recipient, sufficient in the circumstances then existing to indicate to the sender that the Message has been received;
  - (c) if the sender has not received an acknowledgement within the time limit mentioned in the foregoing provisions of this Rule 6, he should take immediate action to obtain it. If, despite such action, an acknowledgement is not received within a further time stipulated by the sender, the sender should advise the recipient of the non-receipt in accordance with the procedures laid down in the User Manual. If he does so, he is entitled to regard the Message as null and void upon giving notice to that effect to the recipient without undue delay;
  - (d) the recipient shall not act on such Message until the acknowledgement is sent in accordance with the foregoing provisions; and

- (e) the costs incurred by the recipient in sending such an acknowledgement shall be borne by the sender.

## 7. Confirmation of Content

- 7.1 The sender of a Message may, in addition to the acknowledgement, request the recipient to advise him whether the content of the Message has been received and the form it has been received in, without prejudice to any subsequent consideration or action that the contents may warrant. A recipient is not authorised to act on such a Message until he has complied with the request of the sender. The sender shall bear the cost of the recipient in sending the confirmation of content/form.
- 7.2 The confirmation referred to in Rule 7.1 above shall be given in such manner and within such time limit as the parties may expressly agree. Where the sender has not agreed with the recipient that the confirmation is to be given in particular form or by a particular method or by a particular time limit, confirmation may be given as soon as practicable after receipt of the Message by the Recipient by:
- (a) any communication by the recipient, automated or otherwise; or
  - (b) any conduct of the recipient, sufficient to indicate to the sender that the contents/form of the Message has been received.
- 7.3 If the sender has not received the requested confirmation advice within the time limit mentioned in the foregoing provisions of this Rule 7, he should take action either to obtain the confirmation or to re-transmit the Message. If, despite such action, the recipient fails to confirm the contents/form of the Message as required, the sender shall treat the Message as null and void upon giving notice to that effect to the recipient.

## 8. Validity and Enforceability

- 8.1 The parties agree that valid and enforceable obligations may be created by the communication of Messages in compliance with these Rules. The parties expressly waive all rights to object to the validity of a transaction solely on the ground that the communication between the parties occurred through the use of Electronic Data Interchange.
- 8.2 Without regard to the absence of any writings and written signatures, to the extent permitted by law, the records of Messages maintained by the parties (including the Data Log) shall be admissible and may be used as evidence of the information contained therein. The parties agree not to contest the admissibility of the Data Log as evidence in any legal, administrative, judicial or other proceedings insofar as it has been maintained in accordance with the provisions of the User Manual.
- 8.3 Unless otherwise agreed between the parties or required by law, a contract concluded through the use of Electronic Data Interchange under these Rules shall be deemed to be formed when the Message sent as acceptance of an offer has been received in accordance with Rule 5.1.

## 9. Storage of Data

- 9.1 Each party shall ensure that a Data Log is maintained without any modification in accordance with the provisions of the User Manual.
- 9.2 The parties shall maintain the Data Log unchanged and protected from corruption for a period of seven years or for such other period as agreed upon by the parties or mandated by the law in the country where the Data Log is maintained.
- 9.3 The Data Log may be maintained on computer media or other suitable means provided that the data can be easily retrieved and presented in readable form, whether as a print-out or in any other visible format.
- 9.4 Each party shall ensure that the person responsible for the data processing system he relies on is available to certify that the Data Log and any reproduction made from it is correct.

## 10. Third Party Service Providers

- 10.1 Messages may be transmitted to each party directly or through any third party service provider ("Intermediary") and processed, stored or logged by such Intermediary. A party is obliged to pay the costs of each service it requires from its own Intermediary and may change this Intermediary upon [two (2)] months' prior notice in writing provided the other party accepts the change in writing.
- 10.2 A party using the services of a third party provider in the communication or processing of Messages shall be responsible for any acts, failures or omissions of that provider in the provisions of the said services.

## 11. Force Majeure

- 11.1 A party shall not be deemed to be in breach of these Rules or otherwise liable by reason of any delay in performance or nonperformance of any of its obligations under these Rules to the extent that such delay or non-

performance is due to an act of God or any other cause beyond such party's reasonable control (including but not limited to any mechanical, electronic or communications failure).

## **12. Invalidity and Severability**

- 12.1 In the event of a conflict between any provisions of these Rules and any law, regulation or decree, the provision of these Rules so affected shall be null and void or shall, where practicable, be curtailed and limited to the extent necessary to bring it within the requirements of such law, regulation or decree. Such a provision shall be severable from and shall not render null and void other provisions of these Rules.

## **13. Notices**

- 13.1 Save in the case of communications by means of Electronic Data Interchange, the provisions of the Standard Trading Conditions relating to notices shall apply to any notices given by one party to another under or pursuant to these Rules.

## **14. Law and Jurisdiction**

- 14.1 These Rules and any claim or dispute arising out of or in connection with these Rules shall be governed by and construed in accordance with the laws and regulations of the Republic of Mauritius and shall be subject to the exclusive jurisdiction of the Mauritian courts.